

## **REMARKS/ARGUMENTS**

### **Double Patenting**

The Examiner has advised the Applicants that Claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate of Claim 20 if Claim 20 is found allowable. Applicant has cancelled Claim 23 and Claim 20 thus making this possible objection moot.

### **Claim Rejections - 35 USC 102**

Claims 4, 6-13, 22, 29 and 30 stand rejected by the Examiner as anticipated by Kopf, US Patent Number 4,885,087 under 35 USC 102 (b). Applicant's respectively ask the Examiner to reconsider this rejection.

Independent Claim 29, as amended, positively recites first and second lines connected to first and second blood connectors on the switch valve and arterial and venous needles respectively. Such features are not disclosed by Kopf which only discloses structure related to cell growth bioreactors. In other words Kopf does not have any switch valve connectors connected to needles. Kopf is directed to a system for growing cells in growth media and thus has no needles for attachment to a patient.

Kopf also fails to disclose a valve member having a width that is less than the peripheral width of each of the openings. This is a positive limitation in Applicant's independent claim 29 rather than a statement related to intended use of the circuit. Kopf simply fails to disclose a valve member having such width.

As Kopf does not disclose or anticipate all features of Applicant's independent Claim 29, the reference cannot further disclose or anticipate all features of the claims that depend therefrom. In view of Applicant's remarks above, Applicants ask the Examiner to reconsider her rejection of Claims 4, 6-13, 22, 29 as anticipated by Kopf. Please note Claim 30 has been cancelled.

Claim Rejections 35 USC 103

Claims 14-16 stand rejected as unpatentable over Kopf in view of Walker, US Patent No. 5,443,453 under 35 USC 103(a). This rejection is respectively traversed.

Kopf is deficient for the reasons set forth above with respect to Claim 29. With respect to Claims 14-16, Kopf also fails to disclose or make obvious the claimed first and second lines, the arterial and venous needles and the claimed width of the valve member. There is no suggestion in Kopf of adding such features as their addition is not needed for the purposes of Kopf and would be counter to such purposes.

The Walker reference also fails to disclose the first and second lines, the arterial and venous needles, the claimed width of the valve members as well as other features of independent Claim 29. Thus even if it were obvious to combine the references the resulting combination would still not have all the features of Applicants' claims.

Claims 17 and 18 stand rejected under 35 USC 103(a) as being unpatentable over Kopf in view of Walker and Levasseur, US Patent No. 4,593,717. This rejection is also respectively traversed.

Kopf and Walker are deficient as noted above. Levasseur adds nothing to cure the deficiencies of Kopf and Walker in that Levassuer also fails to disclose the first and second lines, the arterial and venous needles, as well as the width of the valve member. Thus even if it were obvious to combine all three references these features still would not be in the resulting combination.

Claim 19 stands rejected under 35 USC 103(a) as being unpatentable over Kopf and Levasseur. This rejection is also respectively traversed.

Kopf and Levasseur are deficient as noted above and as noted with respect to the comments concerning independent Claim 29.

Claims 20 and 23 stand rejected under 35 USC 103 (a) as being unpatentable over Kopf in view of Asker. Claims 20 and 23 have been cancelled thus making this rejection moot.

Applicant would like to point out, however, that the valve of Asker is totally unsuited for blood and thus unsuited for use in a circuit that has needles and a dialyzer. The valve of Asker is not constructed without dead end portions and thus blood could easily collect and coagulate around the ends of the valve vain of Asker.

As set forth in MPEP 2243, to establish a *prima facie* case of obviousness, three basic criteria must be satisfied. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references must teach or suggest all of the claimed elements. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in Applicants' disclosure. *See In re Vaeck*, 947 F.2D 488, 20 USPQ2d 1438 (Fed. Cir.1991).

Considering the above criteria for obviousness and the unsuitability of Asker for use in a circuit connected to a dialyser and arterial and venous needles, it is Applicants' position that there is no suggestion to combine the Kopf and Asker references. Also even if combined, the combination would not result in Applicant's invention and would be unsuitable for use with a dialyser and patient needles. There would be no expectation of success for blood use with respect to the resulting combination.

It is believed no fee is required with the filing of this response. If we are mistaken, please charge deposit account number 032316 and required fees.

If the Examiner has any further questions or concerns about this application she is requested to contact Applicant's representative at 1 303 231-4132.

Respectfully submitted,

February 28, 2007

Dated

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